DEC 16 1939
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

---

# No. 595

---

KERSH LAKE DRAINAGE DISTRICT OF JEFFERSON, LINCOLN AND DESHA COUNTIES, ARKANSAS, ET AL.,

*Petitioners,*

*vs.*

A. J. JOHNSON

---

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS AND BRIEF IN SUPPORT THEREOF

---

GEORGE B. ROSE
*Counsel for Petitioners.*

# INDEX.

## Subject Index.


| | Page |
|---|---|
| Petition for writ of certiorari | 1 |
| Statement of basis of jurisdiction | 2 |
| Date of judgment | 3 |
| Federal questions presented | 3 |
| Authorities believed to sustain the jurisdiction | 5 |
| Summary statement of the facts | 6 |
| Prayer for writ | 11 |
| Certificate of counsel | 12 |
| Appendix—Applicable Arkansas Statutes | 13 |
| Brief in support of petition | 17 |
| State Courts will not be permitted to prevent the enforcement of the judgments of the Federal Courts | 17 |
| The Supreme Court of Arkansas denies all faith and credit to the judgment of the District Court of the United States, though it had been affirmed by the Circuit Court of Appeals | 20 |
| The decision of the Supreme Court of Arkansas deprives the holders of the judgments in the United States Court of their property without due process of law | 27 |
| Opinion of the Supreme Court of Arkansas | 29 |
| Benefits insufficient if decrees in Lincoln Chancery Court are permitted to stand | 30 |


## Table of Cases Cited.


| | |
|---|---|
| *Andes* v. *Ely*, 158 U. S. 312 | 28 |
| *Arkansas ex rel. Utley Attorney General for the use of Craighead County* v. *St. Louis-San Francisco Ry. Co. et al.*, 269 U. S. 172 | 29 |
| *Benton* v. *Nowlen*, 187 Ark. 738 | 28 |
| *Brooklyn* v. *Insurance Co.*, 99 U. S. 362 | 6, 24, 28 |
| *Calhoun* v. *Delhi & M. R. Co.*, 121 N. Y. 69 | 28 |
| *California Bank* v. *Traeger*, 215 Calif. 346 | 29 |
| *Central Trust Co.* v. *Bridges*, 57 Fed. 753 | 28 |

| | Page |
|---|---|
| *Chandler, Receiver,* v. *Peketz,* 297 U. S. 609 | 6, 26 |
| *Chicago Mill & Lumber Co.* v. *Drainage Dist. No. 17,* 172 Ark. 1059 | 28 |
| *Craig* v. *Town of Andes,* 93 N. Y. 405 | 28 |
| *Crescent City Live Stock Co.* v. *Butchers' Union Slaughter House Co.,* 120 U. S. 141, 146 | 6, 24 |
| *Cummins* v. *Mullins,* 183 Ky. 666 | 29 |
| *Des Moines Navigation & Rr. Co.* v. *Iowa Homestead Co.,* 123 U. S. 552, 559 | 6, 24 |
| *Dickinson* v. *Mingea,* 191 Ark. 946 | 7, 22 |
| *Dupasseur* v. *Rochereau,* 21 Wall. 130, 134 | 6, 24 |
| *Embry* v. *Palmer,* 107 U. S. 3, 10 | 6, 24 |
| *Empire* v. *Darlington,* 101 U. S. 88 | 6, 24, 28 |
| *Gaines* v. *Springer,* 46 Ark. 502 | 5 |
| *Gypsy Oil Co., In re,* 141 Okla. 291 | 28 |
| *Hagar* v. *Reclamation Dist. No. 108,* 111 U. S. 701 | 6, 27 |
| *Hale* v. *Finch,* 104 U. S. 261 | 6, 24, 28 |
| *Hancock National Bank* v. *Farnum,* 176 U. S. 640, 645 | 6, 24, 27 |
| *Hawley* v. *Fairbanks,* 108 U. S. 544 | 5, 19 |
| *Horse Creek Coal Land Co.* v. *Alderson,* 266 Fed. 477 | 28 |
| *Howard-Sevier Rd. Imp. Dist.* v. *Hunt,* 166 Ark. 62 | 20, 25 |
| *Kersh Lake Dr. Dist.* v. *State Bank & Trust Co. of Wellston,* 92 F. (2d) 783 | 9, 23, 24 |
| *Knights of Pythias* v. *Meyer,* 265 U. S. 30-33 | 6, 24 |
| *Martin* v. *Wilson,* 120 Fed. 202 | 28 |
| *May* v. *Roberts,* 133 Oregon 643 | 28 |
| *Mayor* v. *Lord,* 9 Wall. 409 | 5, 20 |
| *Metcalf* v. *Watertown,* 153 U. S. 671, 676 | 6, 24 |
| *McNeil's Estate, Re,* 155 Calif. 333 | 29 |
| *Ochoa* v. *Hernandez,* 230 U. S. 139 | 6, 27 |
| *Pittsburg, Cincinnati, Chicago & St. Louis Ry. Co.* v. *Long Island Loan & Tr. Co.,* 172 U. S. 493, 507 | 6, 24 |
| *Riggs* v. *Johnson,* 6 Wall. 166 | 5, 20 |
| *Rogers Paving Imp. Dist.* v. *Swafford,* 193 Ark. 260 | 23 |
| *Scott* v. *McNeal,* 154 U. S. 34 | 6, 27 |
| *Schulte* v. *Board of Commissioners,* 119 Okla. 261 | 28 |
| *Sipple* v. *Catron,* 205 Ky. 81 | 29 |
| *Skillern* v. *White River Levee Dist.,* 139 Ark. 4 | 28 |

Page

*South* v. *Back*, 108 S. W. 230 ..... 29
*Stoll* v. *Gottlieb*, 305 U. S. 165 ..... 6, 24
*Supervisors* v. *Durant*, 9 Wall. 415 ..... 5, 17
*United States* v. *Keokuk County*, 6 Wall. 514 ..... 5, 20
*United States* v. *County of Macon*, 99 U. S. 582 ..... 29
*Wabash Railroad* v. *Adelbert College*, 208 U. S. 39 ..... 6, 24, 28
*Windsor* v. *McVeigh*, 93 U. S. 274 ..... 6, 27
*Wolff* v. *New Orleans*, 103 U. S. 358 ..... 6, 24, 28

STATUTES CITED.

Act of February 13, 1925, c. 229, 43 Stat. 936, Sec. 237(b) of the Judicial Code, 28 U. S. C. A., Sec. 344(b) ..... 2
Arkansas Acts of 1909, p. 829 ..... 6
Arkansas Acts 1913, p. 752, Pope's Dig. Sec. 4494 ..... 6
Arkansas Acts 1933, Act 46 ..... 15
Arkansas General Acts of 1919, p. 343, Pope's Dig. Sec. 4507 ..... 7
Constitution of the United States:
Article IV, Sec. 1 ..... 6, 24
Article VI, Par. 2 ..... 6, 24
Fourteenth Amendment ..... 6
Revised Statutes 905 ..... 6

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

---

# No. 595

---

KERSH LAKE DRAINAGE DISTRICT OF JEFFERSON, LINCOLN AND DESHA COUNTIES, ARKANSAS, AND T. H. FREE, CLAUDE H. HOLTHOFF AND EMMETT WARREN, AS COMMISSIONERS OF SAID DISTRICT,

*Petitioners,*

*vs.*

A. J. JOHNSON.

---

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

---

*To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:*

Your petitioner, the Kersh Lake Drainage District of Jefferson, Lincoln and Desha Counties, Arkansas, is an improvement district organized under the laws of the State of Arkansas, and T. H. Free, Claude H. Holthoff and Emmett Warren are its Commissioners, and they pray this Court for the issuance of a writ of certiorari to the Supreme Court of the State of Arkansas, which is the court of last resort

in that State, to review a final judgment of said court reversing a decree of the Chancery Court of Lincoln County. Said suit was brought by order of the United States District Court for the Eastern District of Arkansas in its Western Division, commanding the petitioning Commissioners of said District to act as its receivers in effect, as authorized by the statute and decisions of said Supreme Court, and to bring suit to collect assessments of benefits upon lands within the District, which stood delinquent for drainage taxes. The Lincoln Chancery Court rendered a decree in accordance with the decree of the United States District Court, and the said Johnson, the only one of said landowners who appeared to contest the levy of the assessment, but who was defending for himself and all other landowners, carried said case to the Supreme Court of Arkansas where a decree was rendered reversing the decree of the Chancery Court of Lincoln County upon grounds inconsistent with the decree of the United States District Court, and which, if sustained, will prevent the collection of the amount adjudged by said District Court of the United States to be due the plaintiff therein, and the amount due Lillian Iddings, intervener in said case.

Your petitioners respectfully show that the decision of the Supreme Court of Arkansas is probably not in accord with the applicable decisions of this Court for the reasons hereinafter stated, and fully set forth in the petition for rehearing.

## Statement of Basis of Jurisdiction

The jurisdiction of this Court is invoked under Act of Congress of February 13, 1925, Chapter 229, 43 Statutes 936, Sec. 237B of the Judicial Code, 28 U. S. C., Sec. 344(b), regulating the issue of writs of certiorari to bring up for review judgments of State courts of last resort.

## Date of Judgment

The judgment of the Supreme Court of Arkansas, which is probably not in accord with the applicable decisions of this Court, was rendered on May 29, 1939. The opinion of the court is not yet officially reported, but may be found in 131 S. W. (2d) 620. Within the time allowed by law petitioners filed their petition for rehearing, asking that the decision be reconsidered, but on October 2, 1939, the petition was denied.

## Federal Questions Presented

1. Can a State court enjoin the collection of a tax authorized by State law and ordered by a United States court to be collected for the purpose of raising money to pay a judgment rendered by it?

2. Can a State court deny all faith and credit to a judgment of a Federal court brought to its attention by proper pleading and duly certified as the law requires?

3. Can the holders of a judgment against an improvement district, rendered by a Federal court, be deprived of the means of collecting their judgment by an injunction against the collection of the improvement taxes, issued in a suit brought by a landowner of the district against the district and its commissioners in which these are the only parties, and where no notice was given to creditors and they were given no opportunity to be heard? Or would the injunction decree be void as to creditors because it would deprive them of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States?

The Court may wish to see how these questions arose, and we restate them more in detail as follows:

(1A) When a United States District Court had rendered a money judgment against an improvement district in 1935,

and in 1936 had adjudged that the assessment of benefits of the district bears interest at 6% per annum, and had decreed that the commissioners of the district act as its receivers in effect, all in accordance with State statutes and repeated decisions of the State Supreme Court, and has commanded the commissioners to bring suit to collect the delinquent taxes levied by the proper State court to pay the debts of the district, which taxes can be collected only by a suit to foreclose the lien thereof, and the decree of the District Court has been affirmed by the Circuit Court of Appeals, and suit to foreclose the improvement tax lien has been brought by the commissioners acting as receivers in effect of the District Court, can such suit be defeated by a plea of *res judicata* based on decrees rendered in 1931 and 1932 by a State court in two suits brought by landowners against only the district in one case and against only the district and its commissioners in the other, to which no creditor was a party and no notice to creditors is shown?

The decree exhibited with the plea of *res judicata* shows that the defendant commissioners were the largest landowners in the district and were the greatest beneficiaries of the decree, which forever enjoins them as commissioners from proceeding to collect further taxes amounting to $29,789.46 on their own lands because they have paid taxes to the amount of their assessed benefits without interest. They took no appeal from the decree, though it would certainly have been reversed. Will the fact that the decree was plainly collusive affect the result?

(2A) When suit was brought to foreclose the lien of the improvement taxes as above set forth, and a plea of *res judicata* was filed on behalf of the landowners, setting up said decrees of 1931 and 1932, the commissioners, acting as receivers in effect of the District Court, amended their

complaint, pleading the decree of the District Court affirmed by the Circuit Court of Appeals, as *res judicata*. The State Chancery Court accepted this as controlling, and rendered a decree foreclosing the lien of the delinquent improvement taxes. On appeal the Supreme Court of Arkansas rendered a decree sustaining the defendants' plea of *res judicata*, and forever enjoining the collection of further improvement taxes on the lands released by those decrees. In so doing did it give due faith and credit to the decree of the United States District Court?

(3A) When the Supreme Court of Arkansas entered its decree as above set forth, which, if effective, will deprive the holders of the judgments in the Federal court, who are the real parties in interest in this case, of all means of collecting their judgments, did its decree deprive the holders of the Federal court judgments of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States?

It will be seen that this is not a mere private wrong. The judgments of two Federal courts have been denied all faith and credit by the Supreme Court of Arkansas, and only this Court can vindicate the majesty of National Justice.

## Authorities Believed to Sustain the Jurisdiction

It is believed that the following are some of the cases that sustain the jurisdiction of this Court:

(1 and 1A) No action by a State court will be allowed to interfere with the enforcement of a judgment of the Federal court. *Riggs* v. *Johnson County*, 6 Wall. 166; *U. S.* v. *Keokuk County*, 6 Wall. 514; *Supervisors* v. *Durant*, 9 Wall. 115; *Mayor* v. *Lord*, 9 Wall. 409; *Hawley* v. *Fairbanks*, 108 U. S. 544; *Gaines* v. *Springer*, 46 Ark. 502.

(2 and 2A) State courts must give full faith, credit, and effect to the judgment of the Federal courts. Art. IV, Sec. 1, paragraph 2 of Art. VI of the Constitution of the United States, Section 905 of Revised Statutes; *Chandler, Receiver,* v. *Peketz,* 297 U. S. 609; *Stoll* v. *Gottlieb,* 305 U. S. 165; *Knights of Pythias* v. *Meyer,* 265 U. S. 30-33; *Hancock National Bank* v. *Farnum,* 176 U. S. 640; *Metcalf* v. *Watertown,* 153 U. S. 671; *Dupasseur* v. *Rochereau,* 21 Wall. 130, 134; *Crescent City Live Stock Co.* v. *Butchers' Union Slaughter House Co.,* 120 U. S. 141, 146; *Pittsburgh, Cincinnati, Chicago & St. Louis Railway Co.* v. *Long Island Loan & Trust Co.,* 172 U. S. 493, 507; *Des Moines Navigation & Railroad Co.* v. *Iowa Homestead Company,* 123 U. S. 552, 559; *Embry* v. *Palmer,* 107 U. S. 3, 10; *Wolff* v. *New Orleans,* 103 U. S. 358.

(3 and 3A) Notice and an opportunity to be heard are the essence of due process of law under the Fourteenth Amendment; and without due process of law no man can be deprived of his property. *Windsor* v. *McVeigh,* 93 U. S. 274; *Hagar* v. *Reclamation Dist. No. 108,* 111 U. S. 701; *Ochoa* v. *Hernandez,* 230 U. S. 139; *Scott* v. *McNeal,* 154 U. S. 34; *Hall* v. *Finch,* 104 U. S. 261; *Wabash Railroad* v. *Adelbert College,* 208 U. S. 39; *Empire* v. *Darlington,* 101 U. S. 88; *Brooklyn* v. *Insurance Co.,* 99 U. S. 362.

**Summary Statement of the Facts**

This district was duly organized by the Jefferson Circuit Court in August, 1912, under the general drainage law of Arkansas (Acts of 1909, p. 829). The material parts of this and all other statutes referred to herein are in the appendix. Its benefits were assessed at $293,600.

On March 13, 1913, the statute was amended to make the benefits bear interest at 6% per annum (Ark. Acts 1913, p. 752; Pope's Dig., Sec. 4494). On March 28, 1919, a

statute was passed making the benefits of all drainage districts, whether created by special acts or organized under the general law, bear interest at the same rate (Ark. Gen. Acts of 1919, p. 343; Pope's Dig., Sec. 4507).

The statute authorizes such districts to issue to the contractors who do the work negotiable evidences of indebtedness. The district let the contract, and as the work progressed issued negotiable certificates of indebtedness to the amount of $185,500, payable serially through the years until August 1, 1934. These were paid as they matured until August 1, 1929, when the district defaulted.

In 1913 a drainage tax of 3% of the benefits was levied by the Jefferson Circuit Court. As the certificates of indebtedness were issued higher taxes were levied. Finally in 1924 the court levied a drainage tax of 6½% to continue until the last of the certificates of indebtedness were paid. (See findings in decree of U. S. Dist. Court, R. 20.)

The State Bank & Trust Company of Wellston, Missouri (hereinafter called the Bank), which held a number of the defaulted certificates of indebtedness, brought suit upon them in the United States District Court for the Western Division of the Eastern District of Arkansas. The case was transferred to equity, and on November 1, 1935, the Bank was awarded a judgment for $54,655.00, with interest thereon at 6% (R. 21). This case was carried by the Drainage District to the Circuit Court of Appeals, where the decree was affirmed, 85 F. (2d) 643 (R. 36-37).

Under the law of Arkansas, when an improvement district has made default for 30 days in the payment of any debt, any creditor may, by mandatory injunction, compel its commissioners to act as receivers of the court (Act 46 of 1933; *Dickinson* v. *Mingea*, 191 Ark. 34, 39). The Bank brought suit in the same court for this purpose. The District defended on the ground that the statutes making the

benefits bear interest were passed after the District was organized and the benefits assessed, and for that reason were inapplicable to this District. The District further alleged in its answer that the property owners which had paid the entire value of assessed benefits against their lands had obtained a decree in the Lincoln Chancery Court in the case of *W. A. Fish et al.* v. *Kersh Lake Drainage District* on June 15, 1932, enjoining and restraining the Commissioners of the District from levying or extending any tax against these lands, the assessed benefits of which had been fully paid. Pursuing this same contention, the District, in its requested declarations of law, asked the court to declare that under no circumstances should the Bank have a mandatory injunction against the District and its Commissioners except to have taxes levied and extended against the unpaid assessments of benefits against those lands wherein the assessments of benefits had not been fully paid (R. 32).

The Supreme Court of Arkansas had repeatedly decided that the statutes making the benefits bear interest were valid. In three of these cases the statute was passed after the bonds were sold and the work begun or finished. Having before it this plea, and also the plea that the Commissioners of the District had been restrained from collecting further assessments against the lands involved in the Fish case, together with the District's requested declaration of law that the mandatory decree shall not apply to lands against which the assessments of benefits had been fully paid, the District Court rendered a decree on December 22, 1936, that the benefits bear interest at 6% from the date of their confirmation in 1913. This decree directed that the county clerks in the various counties in which the District lies, who were made defendants, extend upon the tax books of their respective counties a tax of 6½% of the benefits assessed against each tract of land in the District for each

of the years 1936 and the following years until the whole of the decree should be satisfied (R. 21). The decree further provided that the commissioners should act as receivers of the court, and as such bring suit to collect all delinquent taxes of the District, which are collectible only in this way (R. 21-22).

Mrs. Lillian Iddings, who had intervened as the holder of some of the certificates of indebtedness, and obtained judgment, was made a beneficiary of the decree (R. 21). (Although the record shows that the judgment in favor of Mrs. Iddings was in the amount of $3,222.24, this was in fact a clerical error, which was later corrected. The final judgment in her favor as actually entered by the Federal court, which does not appear in this record, was admittedly in the amount of $7,616.40.)

The District appealed this case to the Circuit Court of Appeals, where the decree was affirmed. *Kersh Lake Drainage District* v. *State Bank & Trust Company of Wellston*, 92 F. (2d) 783 (R. 37).

The Commissioners, in obedience to the order of the District Court, brought suit in the Lincoln Chancery Court for the foreclosure of the delinquent assessments (R. 1). All the landowners made default except A. J. Johnson. He filed an answer in behalf of himself and all other landowners similarly situated (R. 3).

In this answer he alleged that his land was assessed at $1,600, and that he had paid $1,628. As the benefits had borne interest at 6% from 1913 to 1937, the assessment had been at least doubled.

He also filed a copy of a decree rendered October 19, 1931, by the Lincoln Chancery Court in an injunction suit brought by him aaginst the District (R. 6), where the court found that his assessment of $1,600 was discharged by the

payment of $1,628, and he pleaded this as *res judicata* (R. 3).

He likewise filed a copy of a decree of the same court rendered in an injunction suit brought by two persons named Fish against the District in 1932 (R. 8). This decree shows that upon the filing of the suit an auditor was appointed by the court to ascertain what drainage taxes had been paid on each tract of land; and the decree enjoined the collection of all drainage taxes on lands whose owners had paid an amount equal to the original assessment without interest. The amount released by this decree was $197,630.00.

The only defendant in the Johnson suit was the District. The only defendants in the Fish suit were the District and its Commissioners. The only plaintiff in the Johnson case was Johnson himself. The only plaintiffs in the Fish suit were the two Fishes. The number of landowners whose assessments were satisfied was 102. Amongst these were the three Commissioners, who were relieved of drainage assessments amounting to $29,789.46, as follows: Holthoff, Chairman of the Board, $15,283.12; Free, $7,577.50; Gantt & Warren, $6,928.84. Warren was the third Commissioner.

Though these decrees would certainly have been set aside by the Supreme Court of Arkansas because they allowed nothing for interest, as required by its repeated decisions, no appeal was taken by the Commissioners, though it was their duty to do so as trustees for the District and its creditors. Their present change of attitude is explained by the fact that they are now acting as receivers of the Federal court.

When this answer was filed, the District filed an amendment to the complaint in its suit to foreclose drainage taxes, setting up the decrees in the District Court as *res judicata*, and filing with it certified copies of the decrees with the

pleadings in both cases (R. 24). In its amended complaint, the District raised the Federal questions now relied upon by it for reversal of the judgment of the Supreme Court of Arkansas.

The chancellor entered a decree overruling the defenses and foreclosing all the delinquent assessments (R. 41).

Johnson appealed to the Supreme Court of Arkansas. In their brief in that case the petitioners again insisted upon and argued the Federal questions now presented to this Court. On May 29, 1939, the Supreme Court of Arkansas, by a four to three decision, reversed the decree of the trial court, holding that the decrees rendered in 1931 and 1932 in the injunction suits brought by Johnson and Fish were *res judicata*, precluding the collection of any further drainage taxes on the lands therein described (R. 47).

The petitioners, in apt time, filed a petition for rehearing (R. 56), in which the Federal questions now relied upon were again brought to the attention of the Supreme Court of Arkansas. This petition was overruled on October 2, 1939 (R. 63).

The Supreme Court of Arkansas is the last court of that State to which the case could be carried.

The only evidence as to the amount of benefits yet to be collected is the statement of Victor Felly, witness for respondent, who gives the amount as $52,119.40 (R. 41). The judgment of the Bank is $54,654 with interest at 6% from November 1, 1935, and that of Mrs. Iddings is $7,616.40 with like interest from December 26, 1936. It is, therefore, evident that if all the assessments were paid, which is incredible, the benefits without interest would lack many thousands of dollars of sufficing to pay the judgments of the Federal court.

WHEREFORE your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal

of this Court, directed to the Supreme Court of Arkansas, commanding the said court to certify and send to this Court, a full and complete transcript of the record and all proceedings of said Supreme Court of Arkansas in the said case, entitled Johnson *et al. v.* Kersh Lake Drainage District, No. 5501, to the end that the said case may be reviewed and determined by this Court as provided by Section 237B of the Judicial Code, and that your petitioner may have such other or further relief or remedy in the premises as this Court may deem appropriate and in conformity with said provision of the Judicial Code and that the said judgment of the said Supreme Court of Arkansas in the said case and every part thereof may be reversed by this Honorable Court.

KERSH LAKE DRAINAGE DISTRICT OF LINCOLN, JEFFERSON & DESHA COUNTIES, ARKANSAS, and T. H. FREE, CLAUDE H. HOLTHOFF and EMMETT WARREN, Its Commissioners,
*Petitioners,*

By GEORGE B. ROSE,
*Their Attorney.*

STATE OF ARKANSAS,
*County of Pulaski:*

I certify that this petition for certiorari is not taken for purposes of delay; but that justice may be done, and that I believe the positions assumed in the petition and in the brief are in accordance with the law.

GEORGE B. ROSE,
*Atty. for Petitioners.*

# APPENDIX

## Applicable Arkansas Statutes

### Pope's Digest

Sec. 4484. *Bonds secured by liens—enforcement.* All bonds issued by commissioners under the terms of this act shall be secured by a lien on all lands, railroads and tramroads in the district, and the board of directors shall see to it that a tax is levied annually, and collected under the provisions of this bill, so long as it may be necessary to pay any bond issued or obligation contracted under its authority; and the making of said assessment or levy and collection may be enforced by mandamus.

If any bond or interest coupon on any bond issued by said board is not paid within thirty days after its maturity, it shall be the duty of the chancery court of the proper county, on the application of any holder of such bond or interest coupon so overdue, to appoint a receiver to collect the taxes aforesaid; and the proceeds of such taxes and collections shall be applied, after payment of costs, first to overdue interest, and then to payment pro rata of all bonds issued by the said board which are then due and payable; and the said receiver may be directed by suit to foreclose the lien of said taxes on said lands; and the suits, so brought by the receiver, shall be conducted in all matters as suits by the board, as hereinbefore provided, and with like effect; and the decrees and deeds herein shall have the same presumptions in their favor; provided, however, that when all such sums have been paid, the receiver shall be discharged, and the affairs of the district conducted by the board of directors of said district as hereinbefore provided. (General Drainage Act of 1909, Sec. 25.)

Sec. 4494. *Interest included in tax—mode of payment of assessment.* The amount of interest which will accrue on bonds issued by such districts and subdistricts shall be included and added to the tax, but the interest to accrue on account of the issuing of said bonds shall not be construed as a part of the cost of construction in determining whether

or not the expenses and costs of making said improvements are or are not equal to or in excess of the benefits assessed.

When assessments of benefits are made in drainage and other improvement districts, the landowners shall have the privilege of paying the same in full within thirty days after the assessment becomes final. But all such assessments shall be made payable in installments (a), so that not more than twenty-five per cent shall be collectible in any one year against the wishes of the landowner, and, in the event that any landowner avails himself of this indulgence, *the deferred installments of the assessed benefits shall bear interest at the rate of six per cent per annum, and shall be payable only in installments as levied. The levy of the assessment may be made by way of proportional amounts of the total assessed benefits, and interest need not be calculated until it is necessary to do so to avoid exceeding the total amount of benefits and interest.* (Italics ours.) (Act 177 of 1913, Sec. 10, page 746.)

ACT 467 OF 1919

General Acts of 1919, page 343

An Act Permitting Deferred Payments of Assessments in Drainage Districts.

Be It Enacted by the General Assembly of the State of Arkansas:

Section 1. Where assessments of benefits have been made in drainage districts organized either under general or special acts, the property owner shall have the right to pay such assessments in full within sixty days after the passage of this Act, but if he does not avail himself of this privilege, *the assessment of benefits shall bear interest at the rate of six (6%) per cent per annum,* and shall be payable only in installments as levied. The interest need not be computed until necessary to be sure that the collections have not exceeded the total amount of benefits and interest; or the interest may be first collected. (Italics ours.)

Approved March 28, 1919.

ACT 46 OF 1933

Page 126

*An Act to Regulate the Collection of Improvement District Taxes*

Whereas, abuses are prevalent in receiverships of levee, drainage and road districts, in the allowance of excessive fees to counsel for filing suits for receivers, the allowance of excessive fees to receivers, the appointment of unnecessary attorneys for receivers and the allowance of excessive fees to them, all of which imposes an additional financial burden on the landowners of the district, and

Whereas, the collection officers provided by law can collect improvement district taxes more expeditiously and at less expense than receivers, if they are made to discharge their duties; now, therefore,

Be It Enacted by the General Assembly of the State of Arkansas:

Section 1. Hereafter all taxes in levee, drainage and road districts shall be collected at the time and in the manner and by the officers specified in the statutes creating them, or under which they were organized, and the duty to promptly extend and collect such taxes may be enforced by a mandamus, or by a mandatory injunction in equity, at the instance of any landowner in the district, the trustee in any deed of trust securing the bonds of the district, the holder of any bond as to which the district has defaulted in the payment of interest or principal, or any other creditor of the district. The remedies herein provided shall be exclusive, and all laws providing for or authorizing the appointment of a receiver for any such district are hereby repealed, and no court shall appoint a receiver to collect levee, drainage or road district taxes.

Approved February 18, 1933.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

---

# No. 595

---

KERSH LAKE DRAINAGE DISTRICT ET AL.,
*Petitioners,*

*vs.*

A. J. JOHNSON.

---

## BRIEF FOR PETITIONERS

---

### State Courts Will Not be Permitted to Prevent the Enforcement of the Judgments of the Federal Courts

It is established by the decisions of this Court that the Federal Courts will not permit any judgment or act of any State Court to stand in the way of the enforcement of the judgment of the Federal Court. The question has mostly arisen in cases like this where judgments have been rendered by the Federal Court against political bodies of a State requiring them to levy a tax to pay a judgment of the Federal Court and where the defendants pleaded a decree of a State Court enjoining the collection of the tax.

The leading case on the subject is that of *The Supervisors* v. *Durant*, 9 Wall. 415. There a county had issued bonds in aid of certain railroads, and the electors had

voted to levy an annual tax to pay the interest. Some of the bonds were purchased by Durant. In 1860 certain taxpayers of the county filed a bill in the State Court to enjoin the levying of any taxes to pay either principal or interest of the bonds. Durant appeared in the case and opposed the injunction, but the State Court found in favor of the plaintiffs and enjoined The Supervisors. Thereafter, Durant brought suit in the Federal Court and obtained judgment against the county on his bonds. Execution having been issued without satisfaction, the Federal Court granted a mandatory injunction against The Supervisors to levy the tax. The County appealed to this Court, contending that the injunction granted by the State Court in the earlier case prevented the levy of the tax. This Court upheld the judgment of the lower court, saying at pages 418 and 419:

> "In *Riggs* v. *Johnson County,* where it appeared that an injunction had been obtained in one of the State courts, upon the county commissioners, enjoining them against levying any tax to pay certain municipal bonds and coupons, a mandamus was nevertheless sustained to compel the levy of a tax, at the suit of one who had obtained judgment in the Circuit Court for some of the coupons. That case is full authority for the doctrine that an injunction of a State court cannot control, or in any manner affect the action, the process, or the proceeding of a Circuit Court, not because the latter has any paramount jurisdiction over State courts, but because the tribunals are independent of each other. It is true that in *Riggs* v. *Johnson County* it appeared the relator in the information, or suggestion for the mandamus, was not a party to the injunction suit, while the relator here was a party defendant. That, however, can make no difference. The present relator, though made a party with the other defendants, was not enjoined. The decree upon the bill for an injunction was exclusively against the board

of supervisors of Washington, at the suit of others than the relator. And had he been enjoined, it is not easy to see how that fact could have limited the power of the Circuit Court.

"It is of course immaterial whether the injunction of the District Court of Washington County was before or after the judgment obtained by the relator in the Circuit Court of the United States, or whether before or after the institution of the suit. It is not a question which court first obtained possession of the case. In the case of *The Mayor* v. *Lord*, the facts were that the plaintiffs in error had been enjoined against levying a tax, before suit was brought in the Circuit Court, yet it was held that the injunction was no sufficient answer to the alternative mandamus commanding them to levy a tax to pay the judgment afterwards recovered."

A similar situation was presented to the Court in the case of *Hawley* v. *Fairbanks*, 108 U. S. 543, where the Court said at page 551:

"The relator was not a party to the suit in which the injunction was obtained, and, consequently, is not bound by it. Having established her right to the tax by the judgment of the circuit court in a suit to which the town in its corporate capacity was a party, she may use the power of that court to command the assessment and collection of the tax as a means of carrying the judgment into execution, notwithstanding what the taxpayers may have caused to be done in some proceeding to which the relator was not a party. The right to the computation and assessment, as well as the collection of the tax, followed as a matter of law from the establishment of the liability of the town for the payment of the interest which it was agreed should be made by the assessment and collection of the tax. An injunction against the officers before the judgment against the town was rendered cannot stand in the way of the enforcement of the tax by the circuit court to carry its judgment into execution."

Several other decisions of this Court are in accord with the cases above cited. Among them are *Riggs* v. *Johnson*, 6 Wall. 166; *U. S.* v. *Keokuk County*, 6 Wall. 514; *Mayor* v. *Lord*, 9 Wall. 409. These cases have established the law to be that it makes no difference whether the decree of the State Court was rendered before or after the bringing of the suit in the Federal Court; nor does it make any difference whether the plaintiff in the suit in the Federal Court was made a defendant in the injunction suit in the State Court.

**The Supreme Court of Arkansas Denies All Faith and Credit to the Judgment of the District Court of the United States, Though it Had Been Affirmed by the Circuit Court of Appeals**

It is the established law in Arkansas that in a suit against an improvement district, it represents all of its landowners. In *Howard-Sevier Road Improvement District* v. *Hunt*, 166 Ark. 62, the Supreme Court of Arkansas says:

> "The judgment of the District Court of the United States, Western District of Arkansas, in which the Guardian Savings & Trust Co., as trustee for bondholders, instituted an action against the district and its commissioners, and in which the plaintiff sought to validate and collect the first installment on mortgage bonds of the district in the sum of $380,000, was likewise *res judicata* for the appellees' contentions in the case in hand. *The district, in that case, represented the taxpayers, and they were bound by the judgment of the Federal Court.* (Citing cases.)
>
> . . . . . .
>
> "The judgment of the United States District Court, after setting out the bonds, recited: They are 'the valid obligations of said district, and are each duly secured by a first mortgage on the assessment of benefits of

said district, bearing even date to the bond issue, and duly recorded.' The judgment in that case was duly pleaded and in evidence in these consolidated causes. It was the duty of the trial court to give full faith and credit to this judgment. (Citing cases.)"

Neither the State Bank & Trust Company of Wellston nor any other party holding indebtedness of the District was a party to the suits to enjoin the payment of the drainage tax which were brought in the Chancery Court of Lincoln County, nor were they notified of its pendency.

Prior to the passage of Act 46 of 1933, it was provided by statute in Arkansas that if an improvement district was in default for thirty days in the payments of its bonds or interest thereon any bondholder could put the District in the hands of a receiver. The statute so providing appears in the appendix. On February 18, 1933, the Legislature passed Act No. 46 which is in the appendix, and the material part of which is as follows:

"Section 1. Hereafter all taxes in levee, drainage and road districts shall be collected at the time and in the manner and by the officers specified in the statutes creating them, or under which they were organized, and the duty to promptly extend and collect such taxes may be enforced by a mandamus, *or by a mandatory injunction in equity,* at the instance of any landowner in the district, the trustee in any deed of trust securing the bonds of the district, the holder of any bond as to which the district has defaulted in the payment of interest or principal, or any other creditor of the district. The remedies herein provided shall be exclusive, and all laws providing for or authorizing the appointment of a receiver for any such district are hereby repealed, and no court shall appoint a receiver to collect levee, drainage or road district taxes."

The remedy by the appointment of a receiver was probably the most effective means of securing the payment of

the debts of improvement districts that was ever devised. It took the management out of the hands of the commissioners, who must be landowners and who are usually, as in this case, the largest landowners, and who would have to pay their share of any debts of the District, and put its affairs in the hands of an independent receiver, who would prosecute vigorously the necessary suits to collect the improvement taxes. It is a fundamental rule, often announced by this Court, that when you take away from the creditors one remedy, you must give them another substantially as efficient.

With this in mind, the Supreme Court of Arkansas, when the validity of an identical Statute came before it in the case of *Dickinson* v. *Mingea*, 191 Ark. 946, held that under its provisions the commissioners would be in effect the receivers of the court, saying:

> "There appears in the preamble to each of these acts the following paragraph: 'Whereas the collection officers provided by law can collect improvement district taxes more expeditiously and at less expense than receivers, if they are made to discharge their duties.' The significance of the phrase 'if they (the commissioners of the district) are made to discharge their duties' is not to be overlooked. The verb 'made' as here employed means to require or compel. But how are the commissioners to be 'made' to discharge their duties? Section 1, above quoted, answers 'by mandamus or by a mandatory injunction in equity.' There is therefore no abridgment of the court's jurisdiction. *The commissioners become receivers in effect in that they become subject to the jurisdiction of the court. The commissioners would thereafter report to and be supervised by the court just as a receiver would be to the end that they were 'made' to discharge duties imposed upon them by law.* The receivers could do no more than to follow and be governed by the law."

That language was quoted with approval in the same court in *Rogers Paving Imp. Dist.* v. *Swafford*, 193 Ark. 260.

In pursuance to these decisions the United States District Court, in the case of *State Bank & Trust Co. of Wellston* v. *Kersh Lake Drainage District*, included in its decree the following provisions:

> "It Is Further Considered, Ordered and Decreed that the defendants, T. H. Free, Claude H. Holthoff and Emmett Warren, as Commissioners of said district, be required to institute suits for the collection of all delinquent taxes of said district, and to prosecute the same with due diligence to a conclusion, and to see that the delinquent lands are sold promptly under the decree of foreclosure, and that they be required to do all things necessary as commissioners of said district to insure the prompt collection of the drainage taxes; *and the said Commissioners of said district are deemed receivers of this court, and as such they are required to perform all their duties as such commissioners with due diligence, and report their doings to this court on the 1st day of June and December of each year, reporting all taxes collected and what action they have taken to enforce the collection of delinquent taxes.*"

From the decree in that case, making the commissioners of the District its receivers, and levying on the land a tax of 6½ per cent of the benefits per annum until its judgments were paid in full, the defendant appealed to the Circuit Court of Appeals for the Eighth Circuit, which, in the case of *Kersh Lake Dr. Dist.* v. *State Bank & Trust Company of Wellston*, 92 F. (2d) 783, affirmed the action of the District Court (R. 37).

The suit, in which the judgment now sought to be reviewed was rendered, was brought in pursuance to the mandatory requirement of that decree, and was brought by the commissioners in their capacity as practically receivers of

the Federal court. When the respondent filed his answer, setting up the decrees of the Lincoln Chancery Court rendered in 1931 and 1932 as *res judicata*, the District amended its complaint and pleaded the decree of the Federal court, rendered in 1936, and affirmed by the Circuit Court of Appeals in *Kersh Lake Drainage District* v. *State Bank & Trust Company of Wellston*, 92 F. (2d) 783, as *res judicata*, and filed certified copies of the decree in that case and of the pleadings on which it was based.

The Chancery Court gave full faith and credit to the decree of the United States District Court, and rendered its decree foreclosing the lien for the delinquent taxes on land on which the owners had paid drainage taxes to the amount of the original assessment without interest. The Supreme Court of Arkansas, however, reversed the case, holding that the decrees of 1931 and 1932, enjoining the collection of further taxes upon such lands, were *res judicata*, barring the prosecution of the suit.

This Court has decided many times that the State courts must give full faith and credit to the decisions of the Federal Court. Art. IV, Sec. 1 and paragraph 2 of Art. VI of the Constitution of the United States, Rev. Stat. 905; *Stoll* v. *Gottlieb*, 305 U. S. 165; *Knights of Pythias* v. *Meyer*, 265 U. S. 30-33; *Hancock National Bank* v. *Farnum*, 176 U. S. 640, 645; *Metcalf* v. *Watertown*, 153 U. S. 671, 676; *Dupasseur* v. *Rochereau*, 21 Wall. 130, 134; *Crescent City Live Stock Co.* v. *Butchers' Union Slaughter House Co.*, 120 U. S. 141, 146; *Pittsburgh, Cincinnati, Chicago & St. Louis Railway Co.* v. *Long Island Loan & Trust Co.*, 172 U. S. 493, 507; *Des Moines Navigation & Railroad Co.* v. *Iowa Homestead Company*, 123 U. S. 552, 559; *Embry* v. *Palmer*, 107 U. S. 3, 10; *Wolff* v. *New Orleans*, 103 U. S. 358; *Hale* v. *Finch*, 104 U. S. 261; *Wabash Railroad* v. *Adelbert College*, 208 U. S. 39; *Empire* v. *Darlington*, 101 U. S. 88; *Brooklyn* v. *Insurance Co.*, 99 U. S. 362.

In the case of *Howard-Sevier Road Improvement Dist.* v. *Hunt*, 177 Ark. 62, the court says on page 72:

> *"As the district represented the taxpayers, it was bound to plead for them any defense that could have been set up* which would have rendered the bonds invalid, and a good defense would have been that, for any reason whatsoever, there was no valid assessment of benefits. *The district could, and should, have pleaded such defense for the benefit of the taxpayers."*

Thus it is seen that the rule in Arkansas is that a District represents its taxpayers and must plead defenses for their benefit. In compliance with this principle, the Commissioners of the District, in the amendment to their answer in the Federal court pleaded that a decree of the Lincoln Chancery Court had enjoined them from collecting additional assessments upon the lands of property owners who had paid the full amount of their assessment without interest (R. 32, paragraph 7 of amendment to answer). The District emphasized this point by requesting the court to declare as a matter of law that its mandatory injunction should be limited to the collection of assessments upon lands wherein the full amount of the assessment of benefits without interest had not been paid (R. 32). Nevertheless, the Federal court required the county clerks to extend taxes against every tract of land in the District, and directed the Commissioners, as its receivers, to bring suit to collect all delinquent taxes (R. 21, 22).

The Federal court, therefore, necessarily decided that the plea of the District was not well taken and that its judgment shall be collected by making an assessment against the property which was involved in the *Johnson* and *Fish* cases. In fact, the Federal court decree expressly found that the assessment of benefits did bear interest, which finding, when considered with its order that taxes be assessed

against every tract of land in the District, amounted to an express rejection of the plea made by the District.

Since the District represented all property owners having land within its boundaries, the decree of the Federal court is as binding upon the respondent and those he represents in this case as if they had appeared personally and contested the right of the Federal court to disregard the injunction decrees entered by the Lincoln Chancery Court. Nevertheless, the Supreme Court of Arkansas has undertaken to give new life to the injunction decrees, which the Federal court has held not to be binding on these petitioners. Under the authorities heretofore cited, the Supreme Court of Arkansas has, therefore, denied full faith and credit to the decree of the District Court, even though that decree has been affirmed by the Eighth Circuit Court of Appeals.

The Supreme Court of Arkansas says that as the Federal Court directed the commissioners to bring suit, and the suit was brought in the State Court, this meant that the State Court was to have full discretion as to the judgment it would render. This contention is completely settled by the case of *Chandler, Receiver*, v. *Peketz*, 297 U. S. 609. In that case the Federal Court in Minnesota, in winding up the affairs of an insolvent corporation, levied an assessment of 100 per cent upon the capital stock as authorized by the Statutes of Minnesota, and the receiver appointed in the case was directed to bring suit against the stockholders to recover the amount. Peketz, one of the stockholders, lived in Colorado, and the suit was brought there. The trial court there held, like the Supreme Court of Arkansas, that as the suit was brought before it, the decision should be in accordance with its views, and it refused to render judgment as required by the decree of the Federal Court. In this it was affirmed by the Supreme Court of Colorado. This Court sent down its certiorari, brought the case up, reversed

it and sent it back to the Supreme Court of Colorado, with directions to render a judgment in accordance with that of the Federal Court in Minnesota.

The case of *Hancock National Bank* v. *Farnum*, 176 U. S. 640, is precisely like the last. In winding up a Kansas corporation, the Federal Court in that State levied an assessment against its stockholders, and suit was brought upon this in a State Court in Rhode Island against a stockholder residing there. The Rhode Island Courts held that the stockholder was not bound; but this Court reversed that decision and held that the Rhode Island courts were bound by the judgment of the Federal Court in Kansas and remanded the case with directions to enter judgment accordingly. A number of cases to the same effect are cited in the opinion.

**The Decision of the Supreme Court of Arkansas Deprives the Holders of the Judgments in the United States Court of Their Property Without Due Process of Law.**

The decrees in the Chancery Court of Lincoln County could not affect the claims of creditors of the District.

This Court has decided in many cases that the essence of due process of law is notice and the opportunity to be heard. *Windsor* v. *McVeigh*, 93 U. S. 274; *Hagar* v. *Reclamation Dist. No. 108*, 111 U. S. 701; *Ochoa* v. *Hernandez*, 230 U. S. 139; *Scott* v. *McNeal*, 154 U. S. 34. The creditors in this case had neither. They were not made parties to the suit, and had no notice of its pendency. Yet the decision of the Supreme Court of Arkansas destroys their only means of collecting their debt because of a decree to which they were not parties and of which they had no notice.

The case of *Fish* v. *Kersh Lake Drainage District* which the Supreme Court held to be conclusive upon the creditors holding judgments in the Federal Court, was obviously collusive as a matter of law. The greatest beneficiaries were the Commissioners of the District, who were relieved of

assessments upon their lands amounting to $29,789.46. They were the defendants in the suit. They filed no answer and made no defense; yet the chancellor relieved them and all other landowners, who had paid an amount equal to their assessment of benefits without interest, of all further liability. The case should have been appealed to the Supreme Court, which had many times held that statutes providing for interest upon assessments of benefits were valid, and which would certainly have reversed the decision. Respondent contended that the benefits could not be made to bear interest by a statute passed after the assessment was made; but in *Benton* v. *Nowlen*, 187 Ark. 738, *Skillern* v. *White River Levee Dist.*, 139 Ark. 4, *Chicago Mill & Lumber Co.* v. *Drainage Dist. No. 17*, 172 Ark. 1059, the statutes were passed after bonds were sold and the work done in whole or in part.

A collusive decree binds no one. It is not the act of the court, but merely a fraud upon the court. *Calhoun* v. *Delhi & M. R. Co.*, 121 N. Y. 69; *Craig* v. *Town of Andes*, 93 N. Y. 405; *Andes* v. *Ely*, 158 U. S. 312; *Central Trust Co.* v. *Bridges*, 57 Fed. 753, decided by Chief Justice Taft when circuit judge; Martin v. Wilson, 120 Fed. 202, decided by the Circuit Court of Appeals of the Seventh Circuit; *Schulte* v. *Board of Commissioners*, 119 Okla. 261; *In Re Gypsy Oil Company*, 141 Okla. 291; *May* v. *Roberts*, 133 Oregon 643; *Wolff* v. *New Orleans*, 103 U. S. 358; *Hale* v. *Finch*, 104 U. S. 261; *Wabash Railroad* v. *Adelbert College*, 208 U. S. 39, *Empire* v. *Darlington*, 101 U. S. 88; *Brooklyn* v. *Insurance Co.*, 99 U. S. 362.

The decree in the Federal Court rendered in 1936 was *res judicata*, and would have superseded the decrees in the State Court rendered in 1931 and 1932 even if they had been valid. In matters of *res judicata* it is always the last judgment which controls. *Horse Creek Coal Land Co.* v. *Alderson*, 266 Fed. 477, decided by the Circuit Court of Appeals

of the Fourth Circuit; *California Bank* v. *Traeger*, 215 Calif. 346; *Sipple* v. *Catron*, 205 Ky. 81; *South* v. *Back*, 108 S. W. 230; *Cummins* v. *Mullins*, 183 Ky. 666; *Re McNeil's Estate*, 155 Calif. 333.

**Opinion of the Supreme Court of Arkansas**

It appears that the opinion of the Supreme Court of Arkansas in this case was based on *United States* v. *County of Macon*, 99 U. S. 582, and *Arkansas, Ex Rel. Utley, Attorney General, for the Use of Craighead County* v. *St. Louis San Francisco Railway Company et al.*, 269 U. S. 172. The first case only holds that the Federal court had no authority by mandamus to compel the collection of a tax which the law did not authorize. Here the laws of Arkansas do authorize interest on the assessment of benefits, and the District Court had so held in the decree in which the mandatory injunction was issued. Moreover, the tax of 6½% per annum had been duly levied by the Jefferson Circuit Court, to run until the last of the certificates of indebtedness had been paid in full. In the second case, the court said:

> "The mandamus not having prescribed the particular methods of assessing the tax, the state court was left free to determine whether the assessment was made according to law, and in so doing it did not determine any matter which had been adjudicated by the District Court or refuse to give full effect to its judgment."

We can see nothing in that case which justifies the opinion of the Supreme Court of Arkansas in the present case. There the State court determined a matter that had not been adjudicated by the Federal court. Here there had been litigated in the Federal court the question of whether the assessed benefits bore interest at six per cent, and the Federal court had determined that they did; and the Supreme

Court of Arkansas failed to give the Federal court's decree full faith and effect.

We pray the Court to read the dissenting opinion filed by Justice Smith and concurred in by Justices McHaney and Baker, and which is interesting as showing the disastrous results that might follow an affirmance of the decision of the court below.

**Benefits Insufficient If Decrees in Lincoln Chancery Court Are Permitted to Stand**

In the court below counsel asserted that $100,000 of benefits remained unimpaired by the decrees in the Lincoln Chancery Court, but the statement (R. 41) of their own witness, Victor Felly, stands uncontradicted, and shows that the total uncollected benefits amount only to $52,119.40. The judgment recovered by the Bank is $54,655 with interest at 6% per annum from November 1, 1935, until paid. The judgment of Mrs. Lillian Iddings is for $7,616.40 with interest at the same rate from December 22, 1936, until paid. Therefore, the total amount of the judgments entered by the Federal court exceeds the total uncollected benefits, as stated by the respondent's own witness. It will probably be argued, however, that the Federal court can collect its judgments from the interest on the $100,000 of benefits which were not released by the decrees in the Johnson case and the Fish case. In the first place, no doubt many persons paid their drainage taxes upon lands of little value and, later, allowed them to forfeit. Lands which are so worthless that their owners do not consider them worth the drainage taxes would be of no benefit to the creditors.

In the second place, we submit that the judgment creditors are entitled to the advantages and security of the full assessment of benefits, which makes it certain that their judgments will be paid. Moreover, the judgment creditors

have no priority over other creditors, and there is nothing in the record to show that the District may not be indebted to persons other than the Bank and Mrs. Iddings.

Finally, even if the contention made by counsel for the respondent were correct, it would not constitute an answer to the petitioners' position that the judgment of the Federal court is entitled to full faith and credit. In the case of *State Bank & Trust Company* v. *Kersh Lake Drainage District*, the District pleaded in its answer that it had been enjoined by the Lincoln Chancery Court from collecting assessments against the lands involved in the Johnson and Fish cases. In spite of that plea, the Federal court ordered that an assessment be levied and collected upon every tract of land in the District. The plain effect of that judgment was to overrule the plea made by the District, which we have heretofore shown to be binding upon all property owners in the District, and to decide the matter in favor of these petitioners. The question is, therefore, foreclosed by the operation of the doctrine of *res judicata*, and it is no longer of the slightest importance that there might possibly be other sources for the collection of the judgment entered by the Federal court.

Respectfully,

GEORGE B. ROSE.